Supreme Court, U. S.
FILED
JUN 7 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-811

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Petitioner,

v.

ALLAN BAKKE, *Respondent.*

On Writ of Certiorari to the Supreme Court of the State of California

BRIEF OF THE UCLA BLACK LAW STUDENTS ASSOCIATION, THE UCLA BLACK LAW ALUMNI ASSOCIATION, AND THE UNION WOMEN'S ALLIANCE TO GAIN EQUALITY AS AMICI CURIAE ON BEHALF OF PETITIONER

DANIEL M. LUEVANO
JOHN E. MCDERMOTT
JOHN O. CALMORE
MICHELE WASHINGTON

Western Center on Law & Poverty
1709 W. 8th Street, Suite 600
Los Angeles, California 90017
(213) 483-1491

Attorneys for Amici Curiae

June 7, 1977

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

TABLE OF CONTENTS

Page

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. THE HISTORY OF INSTITUTIONALIZED RACISM AND DISCRIMINATION IN THE PUBLIC SCHOOLS OF CALIFORNIA REQUIRES THAT THE UNIVERSITY UTILIZE A RACE-RELATED CRITERIA TO COMPENSATE FOR EDUCATIONAL DEPRIVATIONS SUFFERED BY NON-WHITES 3

II. THE PROFOUND MAGNITUDE OF THE UNMET HEALTH CARE NEEDS OF NON-WHITES AND THE HISTORICAL IMPERATIVES WHICH ENGENDERED THE ENACTMENT OF TITLE VI REQUIRE THAT THE RACE-RELATED CRITERIA BE UTILIZED IN ORDER TO EFFECTUATE THE MOST EXPEDITIOUS RELIEF POSSIBLE 13

A. The Genocide Convention Adopted By The United Nations Provides Restrictions Of International Law Which Are Applicable When Racial Discrimination Results In The Deaths Of A Significant Portion Of A Racial Subgroup 14

B. The Extreme Disparities In The Quality Of Health Between Whites And Non-Whites Reveal The Serious Magnitude Of Racial Discrimination Within The Health Care Delivery System 16

C. The Legislative And Social History Of The Civil Rights Act Of 1964 Requires That The University Utilize The Most Expeditious Means Possible To Meet The Unserved Medical Needs Of The Non-White People 24

D. The Non-White Communities In California Have Special Health Care Needs Which Require The Use Of Race-Related Criteria In The Universities' Medical School Selection Process 29

CONCLUSION 39

CASES: Page

Alvey v. Downstate Medical Center, 384 N.Y.S. 2d 82, 84 (1976) 27, 28
Crawford v. Board of Education of the City of Los Angeles, 17 Cal. 3, 280 (1976) 4, 5, 6, 11
Flanangen v. President and Director of Georgetown College, 417 F. Supp. 377, 379 (1976) 26
Hernandez et al. v. Board of Education of Stockton on Unified District, Civ. No. 101016, San Joaquin Superior Court (October 9, 1974) 5
Hobson v. Hansen, 269 F. Supp. 401, 480 (1967) 35
Johnson v. San Francisco Unified School District, 339 F. Supp. 1315 (1971) 5
NAACP v. San Bernardino City Unified School District, 17 C. 3d 3131 (1976) 5
Morgan v. Kerrigan, 401 F. Supp. 216, (1975) *affirmed* 530 F.2d 401 (1976) 9
Soria v. Oxnard School District, 386 F. Supp. 339 (C.D. Cal., 1974) 5
Spangler v. Pasadena City Board of Education, 311 F. Supp. 501 (1970) 5
United Jewish Organization of Williamsburg, Inc. v. Carey, 97 S. C. 996, 1014 (1977) 28
Washington v. Davis, 426 U.S. 229 (1976) 12, 26

STATUTES:

California Educational Code:
§ 7504 5
§ 8003 4

Civil Rights Act of 1974 (42 U.S.C. 2000d)
Title VI 8, 9, 10, 11, 13, 24, 25
Title VII 12, 13

United Nations Genocide Convention:
Article II 3, 15

CONSTITUTIONAL MATERIAL:

California Constitution:
Art. IX, § 1 5
Art. IX, § 2 6
Art. IX, § 5 5
Art. IX, § 6 5
Art. IX, § 9 5

Page

Constitution of the United States:
Article VI, § 2 16
Thirteenth Amendment 13
Fourteenth Amendment 12, 13

United Nations Charter:
Art. 1, para. 3 15
Art. 13, para. 1(b) 15
Art. 55, para. 6 15

CONGRESSIONAL MATERIALS:

H.R. 7152 ..... 8, 10

110 U.S. Code Cong. and Adm. News (1964) 2293, House Report No. 914, Nov. 20, 1963 8

110 Cong. Rec.—House 15879 (1964) 9

110 Cong. Rec.—Senate 7070, 7899, 1900, 8594, 14312 (1964) 24

MISCELLANEOUS:

Abarbenal, *After Intensive Care: Is a Relapse Ahead for Minority Medical Education?*, 17 Foundation News 11-28 (1976) 33

H. Applewhite, Blacks in Public Health, Journal of the National Medical Association, Vol. 66, number 6, pp. 505-510, Nov., 1974 38

American Public Health Association, *Minority Health Chart Book*, U.S.P.H.S./D.H.E.W., Contract Number HRA 160-74, October 20-24, 1974, at 50 22

Brown, *A Position Paper on Admissions to the University of Minnesota Medical School*, 62 Journal of the National Medical Association 468-469 (1970) 30

Budget Issue Paper on Federal Prison Construction prepared by the Congressional Budget Office for the Congress of the United States, January, 1977, p. 8 20

"Characteristics of Felon Population in California State Prisons By Institution, June 30, 1976" State of California, Dept. of Corrections, (Aug. 19, 1976) p. 1 20

Page

The Community and Racial Crisis (B. Flicker Ed. 1969) 3

P. Cornely, Health Status of the Negro 58(4)AJPH 651 (April 1968) 35

Darity, William A., "Crucial Health and Social Problems in the Black Community," *Journal of Black Health Perspectives,* June/July, 1974, p. 30 .... 17, 23

"Educational Attainment in the United States" U.S. Bureau of the Census Series, p. 20 No. 274 G.P.O. Wash., D.C. (1974), p. 461 19

A. C. Epps, The Howard-Tulare Challenge: A Medical Education Reinforcement and Enrichment Program. 67(1) JNMA 55-60 (June 1975) 7

Evans, "*Reverse Discrimination,*" 51 Journal of Medical Education 80-82 (1976) 33

Evans and Jackson, 51 Journal of Medical Education 197-199 (1976) 35

R. Ginzburg, *One Hundred Years of Lynchings* (1969) 37

A. Golenpaul, Information Please Almanac (29th ed. 1974) 29

William H. Grier and Price M. Cobbs, Black Rag. Basic Books, Inc. 1968 38

Herrera, *Chicano Health Professionals,* Agenda 8-11 (Winter, 1974) 29

Illiteracy in the United States, U.S. Bureau of the Census, Current Population Reports, Series p. 20 No. 217 (Nov. 1969) at p. 8 19

Jackson, *The Effectiveness of a Special Program for Minority Group Students,* 47 Journal of Medical Education 620-624 (1972) 31

Johnson, *Conference on Increasing Representation in Medical Schools of Afro-Americans, Mexican-Americans, and American Indians,* 44 Journal of Medical Education 710-711 (1969) 30

Mantovani, Gordon, and Johnson, *Medical Student Indebtedness and Career Plans,* 1974-75, DHEW Publications Number (HRA) 77-21 (1976) 34

Page

L. Miller, The Petitioner (1966) 3

L. Miller. The Petitioner 433 (1967) 39

Monthly Labor Review, Employment and Unemployment in 1976 (Feb. 1977) pp. 11-12 18

W. Patternson, *We Charge Genocide* (1951) 3

Primary Care: Getting Down to Basics, 4 The Black Bag 156-157 (1976) 34

E. L. Rann, Why NMA? 66(5) Journal of the National Medical Association 435-439 (Sept. 1974) 36

Reports of The National Advisory Commission on Civil Disorder, 1968 ..... 3, 14

R. H. Seiden, *Current Development in Mivority Group Suicidology,* JBPH 1(4): 29-42, Aug.-Sept. 1974 37

"Sourcebook of Criminal Justice Statistics", United States Law Enforcement Assistance Administration, National Criminal Justice Administration, National Criminal Justice Information and Statistic Service, G.P.O. Wash., D.C. (1974), p. 461 20

Spruce, *Toward a Larger Representation of Minorities in Health Careers,* 64 Journal of the National Medical Association 432-436 (1972) 30

Statistical Summary of Students and Staff at the University of California, 1975-1976, p.62, 64, 66 6

Testimony of William Burnett, *Hearings on the Bakke Decision and Increasing Access for Disadvantaged Graduate Students Before the California Assembly Permanent Subcommittee on Postsecondary Education,* March 2, 1977, pp. 36, 37, 38 .....30, 33, 34

Testimony of Mary Bush, *Hearings on the Bakke Decision and Increasing Access for Disadvantaged Graduate Students Before the California Assembly Permanent Subcommittee on Postsecondary Education,* March 2, 1977, p. 52 31

Page

Testimony of George Sutherland, *Hearings on the Bakke Decision and Increasing Access for California Disadvantaged Graduate Students Before The California Assembly Permanent Subcommittee on Postsecondary Education,* March 2, 1977, pp. 9-13 14

Tilson, *Characteristics of Physicians in OEO Neighborhood Health Centers,* 10 Inquiry 27-38 (1973) 34

Thompson, *Curbing the Black Physician Manpower Shortage,* 49 Journal of Medical Education 944-950 (1974) 29

M. Tolchin, *The South Bronx, a Jungle Stalked by Fear, Seized by Rage,* N.Y. Times, Jan. 15, 1973, at col. 2, the first of a four part series 19

United Nations General Assembly, Adoption of the Convention on the Prevention and Punishment of the Crime of Genocide And Text of the Convention, Resolution 260, Dec. 9, 1948 15

U.S. Bureau of the Census, *Statistical Abstract of the United States: 1976,* (97th edition) Washington, D.C., 1976, table 91 at 64 21

U.S. Bureau of the Census, Census of Population: 1970, *General Population Characteristics,* Final Report PC(1)-B1 United States Summary, Table 48 23

U.S. Bureau of the Census, U.S. Census at 591, 593, Tables No. 189-190 (1970) 30

U.S. Dept. of Commerce, Bureau of Census, The Social and Economic Status of the Black Population in the United States 1973, p. 29 18

U.S. Commission on Civil Rights, "Twenty Years After Brown, Equal Opportunity in Housing," Dec. 1976, pp. 10-11 19

U.S. Department of H.E.W., P.H.S., National Center for Healta Statistics, Differentials in Health Characteristics by Color, United States, July 1965-June 1967, (October 1969) p. 3 17

Page

J. L. Warfield, *Black People and Suicide: A Review from a Black Perspective,* JBHP 1 (4): 11-28, Aug.-Sept. 1974 37

Whittico, *The President Column: The Medical School Dilemma,* 61 Journal of the National Medical Association 185 (1969) 30

Wollenberg, "All Deliberate Speed: Segregation & Exclusion in California Schools, 1855-1975", University of California Press, Berkeley and Los Angeles, 1976 at 14 4

World Health Organization, Constitution of the World Health Organization, Geneva, 1946 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-811

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Petitioner,

v.

ALLAN BAKKE, *Respondent.*

On Writ of Certiorari to the Supreme Court
of the State of California

BRIEF OF THE UCLA BLACK LAW STUDENTS ASSOCIATION, THE UCLA BLACK LAW ALUMNI ASSOCIATION, AND THE UNION WOMEN'S ALLIANCE TO GAIN EQUALITY

INTEREST OF AMICUS CURIAE

The UCLA Black American Law Students Association is the local chapter of the National BALSA organization which was founded in 1968. Its purpose is to articulate and promote the goals of Black American law students, encourage professional competence, and instill in the Black attorney and law student a greater awareness and of commitment to the needs of the Black community.

The UCLA Black Law Alumni Association is composed of graduates of the UCLA special admissions program who are interested in the continuing vitality of the special admissions programs as one vehicle of assuring representation of minorities in the University's graduate schools. In conjunction with the University, this Association has a continuing interest in mantaining such programs.

The Union Women's Alliance to Gain Equality is a national organization of working women formed in 1971 in the San Francisco-Oakland Bay Area which now has 1000 subscribing members and 7 local chapters in major cities. Their goal is to fight discrimination, particularly sex discrimination, in unions and in employment in general.

SUMMARY OF ARGUMENT

Until 1954, racial minorities were subjected to government sanctioned segregation and discrimination. Although the official sanctions were removed in California, in 1947, discrimination and segregation continued to be practiced by the educational system in the state. This is particularly significant in California where the primary and secondary school systems are part of a statewide educational network in which the University of California is the apex of the system and the elementary and secondary schools serve as feeder institutions.

In 1964, the Congress of the United States recognized the nationwide problem of racial discrimination and attempted to address the problem in the Civil Rights Act of 1964. Congress specifically emphasized the importance of voluntary efforts to fully eradicate the problems of racial discrimination. Voluntary efforts like those taken by the University of California Davis' Medical School, to increase the representation of minorities in the medical profession, have been specifically upheld by this as well as other federal courts in other educational contexts. These voluntary efforts have not depended upon a showing that

the governmental entity taking the action had discriminated against nonwhites in the past.

The state of health care in nonwhite communities in California and throughout the nation approaches being genocidal. Minorities who live in barrios and ghettos exist in the kind of destructive environment that Article II of the United Nation's Genocide Convention was intended to proscribe. The disparity in health care available to minorities is of such a serious magnitude that it reveals a destructive intent on the part of our society. Nonwhites are subject to the worse social, economic, and cultural conditions of our society, which in turn adversely affects their health. They are the last served segments of our society.

Because of the enormity of the problem, it is doubtful that non-minority doctors can be trained adequately to handle the health problems faced by nonwhites. Part of the problem is the existence of unbridgeable cultural gaps between the races. The result is that the least intrusive alternative for dealing with the health problems of nonwhites is to increase the number of nonwhite doctors.

ARGUMENT

I. THE HISTORY OF INSTITUTIONALIZED RACISM AND DISCRIMINATION IN THE PUBLIC SCHOOLS OF CALIFORNIA REQUIRE THAT THE UNIVERSITY UTILIZE A RACE-RELATED CRITERIA TO COMPENSATE FOR EDUCATIONAL DEPRIVATIONS SUFFERED BY NON-WHITES.

That racial minorities in California and throughout the rest of the country have historically been subjected to government-sanctioned segregation and discrimination is a well documented fact.[1] In the area of public education,

---

[1] *See*, The Community and Racial Crisis (B. Flieker Ed. 1969), Reports of The National Advisory Commission on Civil Disorders, 1968; L. Miller, The Petitioner (1966); W. Pattersen, We Charge Genocide (1951).

this governmental racism has been particularly destructive. Racial segregation of whites from non-whites was mandated by the laws of California at a very early stage in the states development. Legislation passed in 1864 required local school districts to establish separate schools for "Negroes, Mongolians, and Indians" if and when their parents demanded educational services.[2] It was not until 1947 that the last statute requiring racially segregated schools was removed from the books.[3]

Although racial segregation in the schools was thereafter no longer the official law of the state, it was still, in reality, the practiced policy of the school authorities. On numerous occasions within the past few years, California courts have repeatedly held that local school boards have been guilty of both *de jure* and *de facto* segregation. The largest school district in the state, the Los Angeles Unified School District, which serves over 800,000 students, was found to be guilty of *de jure* segregation in 1970. *Crawford* v. *Board of Education of the City of Los Angeles*, 17 Cal. 3, 280 (1976) (finding of *de jure* segregation

---

[2] Until 1947, § 8003 of The California Educational Code provided:

> "*Schools for Indian children, and children of Chinese, Japanese, or Mongolian parentage: Establishment.* The governing board of any school district may establish separate schools for Indian children, excepting children of Indians who are wards of the United States Government and children of all other Indians who are descendants of the original American Indians of the United States, and for children of Chinese, Japanese, or Mongolian parentage. "*§ 8004. Same: Admission of Children into other schools.* When separate schools are established for Indian children or children of Chinese, Japanese, or Mongolian parentage, the Indian children or children of Chinese, Japanese, or Mongolian parentage shall not be admitted into any other school."

[3] Wollenberg, "All Deliberate Speed: Segregation & Exclusion in California Schools, 1855-1975" University of California Press, Berkeley and Los Angeles, 1976 at 14.

by trial court). In a companion case to *Crawford*, the San Bernardino City Unified School District was also found to be guilty of unlawful segregation and was ordered to desegregate. *NAACP* v. *San Bernardino City Unified School District*, 17 C. 3d 3131 (1976). In 1971, the courts similarly found that in San Francisco, 86 of the District's schools were racially imbalanced and ordered that a desegregation plan be instituted. *Johnson* v. *San Francisco Unified School District*, 339 F. Supp. 1315 (1971) (specific finding of *de jure* segregation overruled 500 F.2d 349). Intentional discrimination was also the official policy of both the Oxnard and the Stockton School Districts until very recently; *Soria* v. *Oxnard School District*, 386 F. Supp. 339 (C.D. Cal., 1974); *Hernandez et al.* v. *Board of Education of Stockton on Unified District*, Civ. No. 101016, San Joaquin Superior Court (October 9, 1974). The Pasadena School District was, in 1971, also found to be guilty of *de facto* segregation which had resulted in a severe racial imbalance throughout all levels of that city's public school system. *Spangler* v. *Pasadena City Board of Education*, 311 F. Supp. 501 (1970).

It is against this background of widespread and pervasive segregation within California's public school system that we must evaluate the action of the University Regents in instituting a special admissions program at the Davis Medical School. California has long supported a philosophy towards public education which emphasizes the importance of providing adequate state supported facilities at *all* educational levels. The primary and secondary schools are only the first phase of a comprehensive network of educational institutions which the state has established in order to provide full educational opportunities to its citizens.[4] The University of California sits at the apex of this network, and as such, is intricately related to

---

[4] Cal. Const. art. IX, § 1; Cal. Const. art. IX. § 5; Cal. Const. art. IX, § 6; Cal. Const. art. IX, § 9; Cal. Educ. Code § 7504.

and dependent upon all of the lower institutions which feed into it. The Superintendent of Public Instruction for the State sits as a permanent member on the Board of Regents for the University and functions as a formal liaison between the public school system and the University.[5] In any given year, between 85-90% of the total student population within the University will consist of California residents.[6] Given this unitarian nature of education which exists in California, it is wholly proper for University officials to address themselves to the problems which have been created by unlawful segregation in so many of the state's public schools.

The destructiveness of this segregation upon minority students was succinctly expressed as a finding of fact by the trial court in the *Crawford* case:

> "Minority students in minority segregated schools do not receive equal education opportunity measured either by educational inputs or outputs. . . .
>
> "Minority segregated schools do tend to result in low aspirations, low achievement, lower educational competition and attitudes. . . .
>
> "The segregated schools, plant, teachers, physical facilities are, in fact, of less quality."[7]

It would be a travesty of justice to require students who have been severely handicapped by the first phase of the public education system to suddenly compete on an "equal basis" with non-handicapped students in the subsequent phase. Some discounting factor must be utilized to compensate for the poorer quality of academic preparation;

---

[5] Cal. Const. art. IX, § 2.

[6] Information obtained from date compiled in a Statistical Summary of Students and Staff at the University of California, 1975-1976, p. 62, 64, 66.

[7] No. 822,854, Superior Court of The State of California for the County of Los Angeles, February 11, 1970.

and since race is the factor which regulates certain students to inferior primary and secondary schools, race must, by necessity, be utilized as a factor in evaluating their applications for the higher university systems.

This principal is especially true when applied to the medical schools, where the quality of a students' pre-college preparation in science and math is critical.[8] As stated by A. Cherrie Epps, Associate Professor of Medicine at Tulane University School of Medicine:

> "For many years it has also been recognized that many minority students do not perform well on the medical college admission (sic) test (MCAT) because of their inadequate secondary school experience which in turn limits the performance at the undergraduate level. Many of those students with potential for medical training, therefore, do not generally qualify for admission to a school of medicine."[9]

---

[8] Dr. Carter L. Marshall, Dean of Health Affairs for the City University of New York has stated the issue as thus: "The basic problem seems to be poor science and mathematics preparation at the pre-college level for minority students in general and for the better minority student in particular. The academic deficiencies make it impossible for the minority student to cope with science courses and inculcate in him a fear of science and mathematics which erodes any nascent interest he may have had in medicine. It has been recently pointed out that people who major in science in college decided to do so in primary or secondary school. Such a decision is often impossible in the ghetto schools of New York where "business math" is commonly substituted for algebra and students seem to be systematically steered away from science. This lack of exposure to science is not unique to New York. For example, according to an unpublished report on the Biomedical Interdisciplinary Curriculum Project at the University of California, Berkeley, the percentage of whites taking science courses greatly exceeds that of blacks at one integrated California high school."

[9] A. C. Epps, The Howard—Tulare Challenge: A Medical Education Reinforcement and Enrichment Program. 67(1) JNMA 55-60 (June 1975)

Because the regular admissions process at Davis, and most other medical schools, relies heavily on MCAT scores [10] and undergraduate grades, an evaluation process which fails to discount for race-related educational deprivations will, for the foreseeable future, continue to exclude most of California's non-white students.

This is the problem which the University officials properly addressed when they voluntarily instituted the special admissions program. Such voluntary action is specifically authorized by Title VI of the Civil Rights Act of 1964. During the course of the legislative debates surrounding the enactment of Title VI, it was repeatedly emphasized by Congress that voluntary actions to overcome segregation in federally assisted programs would be a key element. The general introduction for H.R. 7152 stated that:

> "No bill can or should lay claim to eliminating all of the causes or consequences of racial and other types of discrimination against minorities. There is reason to believe, however, that national leadership provided by the enactment of federal legislation dealing with the most troublesome problems will create an atmosphere conducive to voluntary or local resolutions of other forms of discrimination." [11]

Representative McClory, in addressing the issue, stated that:

---

[10] The severe cultural bias and predictive invalidity of the MCAT exam will be discussed in great detail by other amici in the case. In general, the studies show that traditional criteria, the MCAT scores and grades, have little or no predictive correlation with performance during the clinical phase of medical school or with physician practice. As to racial and cultural bias, the evidence overwhelmingly suggests that the MCAT unfairly discriminates against lower socio-economic non-whites.

[11] 110 U.S. Code Cong. and Adm. News (1964) 2393, House Report No. 914 Nov. 20, 1963.

> "As in the case of all other laws, substantial voluntary compliance is necessary in order for such laws to be truly effective. This is doubly true in the case of the Civil Rights bill." [12]

Senator Pastore, in addressing the same issue, stated that:

> "Title VI does not vest arbitrary or dictatorial powers in federal agencies. Actually it is a moderate provision, carefully tailored to the objective of getting the Federal Government out of the business of subsidizing discrimination.
>
> "It is designed to achieve that objective in a manner which puts a premium on voluntary action and is as procedurally fair as it could possibly be." [13]

Title VI was therefore expressly designed to motivate local governmental entities to undertake voluntary actions to overcome whatever particular forms of discrimination characterized their agencies and programs. The decision of the University to directly confront the effects of the intentional discrimination within the state's lower school system was in complete accord with this purpose, especially in view of the totality of the state supported educational system in California.

The courts have, in the past, recognized the appropriateness of involving higher educational institutions in the effort to remedy the evils of segregation in lower public schools. Judge Garrity, in *Morgan* v. *Kerrigan*, 401 F. Supp. 216, (1975) *affirmed* 530 F. 2d 401 (1976), stated:

> In the court's quest for a remedy adequate to reviving the vision of an equitable and effective public school system, it has planned for schools that will be free, universal, inclusive, and sound in ways that meet

---

[12] 110 Cong. Rec.—House 15879 (1964) (Remarks of Representative McClory).

[13] Id at 7060 (Remarks of Senator Pastore).

> the educational needs and aspirations of all of Boston's citizens. It believes that the reconstruction of the ideal of the Common School requires a common concern with equality and excellence throughout all institutions and groups in the entire Greater Boston area. . . . [I]t has solicited the talent, support and assistance of colleges, universities and business and other organizations in developing learning opportunities that will remedy the losses students have already suffered and that will lay a basis for improving the quality of education for the total City."

Furthermore, in stressing the importance of voluntary efforts under Title VI, Congress specifically intended to shift some of the burden which racial minorities of this nation have historically borne in their quest for equal rights under the law. Senator H. Humphrey, one of the principal drafters and supporters of H.R. 7152 stated that:

> "This bill gives the Congress an opportunity to settle the issue of discrimination once and for all, in a uniform across the board manner and thereby to avoid having to . . . debate the issue in piecemeal fashion every time anyone of these Federal assistance programs is before the Congress." [14]

He also declared that:

> "We are dealing with gross deprivation of educational opportunities. We are dealing with massive efforts to block desegregation through the courts, by constant appeals and by ignoring court orders, by thinking up even more ingenious schemes with which to deny equal desegregated education to millions of Negro children. *And thus far, we have been dealing with it by saying to the Negro, 'Sue for your rights in the courts—with your own lawyers, your own resources, your own children's lives.'* [Emphasis added.] [15]

[14] Id at 6544 (Remarks of Senator Hubert Humphrey).
[15] Id at 6541.

Thirteen years later, the circumstances remain virtually unchanged. Segregated schools are still the rule rather than the exception throughout most educational communities in this state and throughout this nation, and non-whites are still suffering from gross deprivations of educational opportunity.[16] To the degree that some integration has been attained within the higher educational institutions, the credit must be given to the special admissions programs.

And, unfortunately, the courts are still unfairly placing the burden upon the non-whites to secure their equal rights, in direct contradiction to the expressed spirit and purpose of Title VI. The California Supreme Court has ruled in this case that, since there was "no evidence" in the record to demonstrate that the University had discriminated against minority applicants in the past, the special admissions program at Davis could not be justified as a means of curing the present effects of past discrimination. 18 C. 3d 34 (1976). In doing this, the Court artificially erected a wall between the Davis Medical School program and the rest of the University and the total educational community in California. It conveniently closed its eyes to the empirical evidence available which clearly indicates that prior to the implementation of special admissions programs, non-whites were virtually excluded from the other University of California medical schools because of the determinative weight given to MCAT scores and

[16] The Los Angeles Unified School District which the court in *Crawford* found to be guilty of *de jure* segregation years ago is still segregated today and continues to deny non-whites an equal education. The latest desegregation plan submitted by the District has recently been characterized as being "Mickey Mouse" (L.A. Times, May 1 1976, § Part I p. 1) by the judge now hearing the case and there is no hope that integration will be effectuated for several years. To the degree that some integration has been attained within the higher educational institutions, the credit must be given to the special admissions programs.

grades.[17] Instead, the Court held that the standards enunciated in *Washington* v. *Davis*, 426 U.S. 229 (1976), would have been applicable, *if* the issue of past discrimination had been raised,[18] and that past discriminatory intent on the part of the University would have to have been proven in order to justify the affirmative action of the special admissions program.[19] In effect, the Court has once again

---

[17] Although this issue was not discussed at the trial court level due to the failure of the University to raise the issue of conflict of interest, amici will present substantial evidence in part II of this brief which will prove that prior to the institution of the special admissions programs the University medical schools were almost completely segregated.

[18] One of the earlier issues presented by amici at the time that the University petitioned this Court for certiorari was that the inherent conflict of interest of the Universities position in this case prevented a full and adequate discussion of all the relevant issues, including that of past discrimination and the problem of curing the present effects of past discrimination. *See* Brief of Amici Curiae on petition for a Writ of Certiorari to the Supreme Court of the United States for the National Urban League; The National Organization for Women (NOW); The United Automobile Aerospace and Agricultural Implement Workers of America (UAW); National Conference of Black Lawyers; The La Raza National Lawyers Association; The Mexican-American Legal Defense and Educational Fund; The Puerto Rican Legal Defense and Educational Fund; California Rural Legal Assistance Incorporated; National Bar Association; The U.C.L.A. Black Alumni Association; the National Federation of Women Organizations; U.C. Davis Law School, Chicano Alumni Association; The Charles Houston Bar Association; the National Lawyers Guild; La Raza National Law Students Association; National Black American Law Student Association.

[19] The *Washington* v. *Davis* standard is inappropriately applied to the instant case. That lawsuit had been filed prior to the enactment of the 1972 Civil Rights Amendment which extended the protections of Title VII to federal employees. As a consequence, the *only* standard for adjudicating the claims of racial discrimination was the constitutional standard embodied by the Fourteenth Amendment. The instant litigation, however, was brought under

unfairly placed the burden of eliminating segregated schools on the shoulders of the non-whites. It would require them to engage in a protected and costly litigation effort to prove discriminatory intent while blindly ignoring the empirical fact of racial segregation. The logic behind this position clearly borders on the hypocritical.

II. THE PROFOUND MAGNITUDE OF THE UNMET HEALTH CARE NEEDS OF NON-WHITES AND THE HISTORICAL IMPERATIVES WHICH ENGENDERED THE ENACTMENT OF TITLE VI REQUIRE THAT RACE-RELATED CRITERIA BE UTILIZED IN ORDER TO EFFECTUATE THE MOST EXPEDITIOUS RELIEF POSSIBLE.

The decision of the University officials to take steps to increase the minority enrollment in the states medical schools was based on more than just the need to compensate for the poor quality education provided for racial minorities in California. One of the prime responsibilities of the University medical school system is to service the health care needs of the state population. The Davis medical school was, itself, specifically constructed for the pur-

---

Title VI of the Civil Rights Act of 1964, (42 U.S.C. 2000d) as well as the Fourteenth Amendment. Since Title VI of the Civil Rights Act was enacted in conjunction with Title VII, it is more appropriate to determine whether there has been unlawful discrimination against non-whites by applying the Title VII disproportionate impact standard rather than the Fourteenth Amendment discriminatory intent standard. The accepted legal maxim for interpreting conflicting laws is that the specific prevails over the general. Clearly, the entire Civil Rights Act of 1964 was enacted to implement the constitutional prohibitions against racial discrimination as embodied by the Thirteenth and Fourteenth Amendments. As such, the specific requirements of Title VI must take precedence over the general prohibitions of the Fourteenth Amendment.

pose of providing primary care physicians in California.[20] It was primarily in an attempt to fulfill this special obligation that the University undertook the medical school's special admissions program. It is a fact that the residents of the racial ghettos and barrios in California, and throughout the rest of the nation, are significantly less healthy than most other Americans. The magnitude of this problem cannot be overemphasized. In this next section amici will outline in detail the profound severity of the health care needs among this nation's minorities. It is understood that increasing the number of minority doctors will not totally eliminate the problem, but there can be no denial of the fact that it will serve to substantially alleviate its magnitude. The ramifications which this case will have upon medical and other professional schools throughout the nation requires that the scope of analysis extend beyond California.

A. The Genocide Convention Adopted By The United Nations Provides Restrictions Of International Law Which Are Applicable When Racial Discrimnation Results In The Deaths Of A Significant Portion Of A Racial Subgroup.

The Kerner Commission, in 1968 concluded that:

> "Segregation and poverty have created in the racial ghetto a destructive environment totally unknown to most white Americans." [21]

It is readily apparent, however, to all those non-whites who must exist on a day to day basis within the barrios and ghettos that this "unknown destructive environment"

---

[20] *See*, Testimony of George Sutherland, Hearings On the Bakke Decision and Increasing Access for California Disadvantaged Graduate Students Before The Assembly Permanent Subcommittee On Postsecondary Education, March 2, 1977, pp. 9-13.

[21] Report of the National Advisory Commission on Civil Disorder 2, (1968).

is genocidal in nature. The unbelievable toll which is paid every year in the death and misery of hundreds of thousands of Americans will countenance no other label. The General Assembly of the United Nations, in adopting Article II of the Genocide Convention defined the crime of genocide as encompassing:

> "Any of the following acts committed with intent to destroy, *in whole or in part*, a national, ethical, racial or religious group as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily harm or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group." [Emphasis added.] [22]

The Genocide Convention is more than a statement of moral principal. It is international law setting out specific crimes and specific punishments and it has the status of solemn treaty. It is a direct extension and implementation of the Charter of the United Nations and its obvious intent is to give force and effect to that Charter's numerous pronouncements that the purpose of the United Nations is to contribute to peaceful and friendly relations among nations by promoting "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." [23] The United Nations

---

[22] United Nations General Assembly, Adoption of the Convention on the Prevention and Punishment of the Crime of Genocide And Text of The Convention, Resolution 260, Dec. 9, 1948.

[23] United Nations Charter, Art. 1, Para. 3; Art. 13, Para. 1(b); Art. 55, Para. 6.

Charter, having been signed by the United States and ratified by its Senate, has the status of a treaty within this country. Article VI, § 2 of the United States Constitution dictates that such a treaty becomes part of the supreme law of the land and, as such, must be enforced throughout the nation. The constitutional issues of this case must therefore encompass not only the Fourteenth Amendment and the Civil Rights Act of 1964, but also the legal obligations and responsibilities which are mandated by international law. A decision by this Court to dismantle the medical school's special admissions program will result in the continued denial of critical health care services to California's substantial non-white population and will effectively condemn untold numbers of Americans to unnecessary deaths. The genocidal magnitude of this problem clearly warrants both the Court's attention and concern.

B. The Extreme Disparities In the Quality Of Health Between Whites and Non-Whites Reveal The Serious Magnitude of Racial Discrimination Within The Health Care Delivery System.

It is becoming increasingly clear that health status cannot be evaluated properly in a vacuum, isolated from its interlocking relationship with the societal environment generally. Recognizing this, for example, the World Health Organization has defined health as ". . . a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity." [24]

When viewing health from this perspective, the non-whites in America are seen to face extremely critical problems. This nation's non-whites continue to bear the long-standing burdens of the American Dream having gone bad: Socio-economic patterns have literally entrapped many of them in a vicious cycle that circumscribes their existence by the realities of racial and ethnic discrimination, poverty, unemployment, poor housing, poor schooling, and overrepresentation in the prison population. These, in turn, impact adversely on the health of the non-white population. As one commentator has stated:

[24] World Health Organization, Constitution of the World Health Organization, Geneva, 1946.

> "Black health professionals must be aware that there are many compounded problems to be solved in the Black community. They must be cautious to not concentrate only on direct health services, but equally concentrate on those other direct factors which affect total health, such as: unequal employment rates in the Black community; an inordinately high ratio of Blacks in low income paying jobs; a highly differential lower income ratio for Black; specific health indices such as inadequate medical and dental care; an exceptionally high infant mortality rate; extremely high maternal death rates; higher age adjusted death rates; lower life expectancy; and a high rate of poverty." [25]

Accordingly, petitioners herein turn to a brief description of these "compounded problems."

While unemployment has steadily risen for all groups during the 1970's, between 1973 and 1975 the rate of increase was substantially greater for Blacks and the Spanish-surnamed. For Whites, unemployment increased by 3.5% while the comparable figures for Blacks and persons of Spanish origin were, respectively, 5.4% and 4.7%.[26]

Closely correlated with the high rate of unemployment is the job distribution of those actually employed by types of occupations. In 1972, 30.2% of all non-white employees as compared to 15.6% of Whites were working in the lower paying jobs such as domestics, service workers, and

[25] Darity, William A., "Crucial Health and Social Problems in the Black Community," *Journal of Black Health Perspectives* June/July, 1974, p. 30.

[26] U.S. Department of H.E.W., P.H.S., National Center for Health Statistics, *Differentials in Health Characteristics by Color, United States, July 1965-June 1967*. (October 1969) p. 3.

laborers and only 29.8% of the non-whites were working as professionals or proprietors as compared to 50% of the Whites.[27] In 1976, 51.8% of the White work force was employed in a white-collar position, while Blacks in similar positions were only 31.6% and Spanish-origin workers in similar positions were only 32.1%.[28]

As of 1972, the non-white family median income was $7,106 annually and the corresponding income for the White family was $11,549, a disparity of $4,443. Moreover, in 1973, it was found that among designated minorities, including Blacks, 29.6% had income below the poverty line determined by the federal government, while only 8.4% of the White population fell below that line.[29]

In its report on equal opportunity in housing, the United States Commission on Civil Rights concluded:

> "In addition to residential segregation, the effect of discrimination has been to sustain the inferior housing conditions in which lives a greater proportion of minorities and families headed by women, particularly minority women, than do whites and families headed by males. Generally speaking, the worst urban housing conditions are found in central city neighborhoods. It is here that congestion, lack of adequate public facilities and services, and crime combine with poor housing to intensify the misery of poverty existence.
>
> "In 1973, 8.4 percent of all persons in poor white families resided in low-income areas of central cities. In contrast, 40.4 percent of all persons in poor black families, lived in such areas. Among all persons in

[27] Monthly Labor Review, Employment and Unemployment in 1976 (Feb. 1977) pp. 11-12.

[28] U.S. Dept. of Commerce, Bureau of Census, The Social and Economic Status of the Black Population in the United States 1973, p. 29.

[29] *Id.*

> poor families residing in these areas, 68.4 percent were persons in families with a black female head. Concentrations of Spanish speaking populations of Mexican or Puerto Rican origin have also located in such areas, owing in large part to racial and ethnic discrimination in housing." [30]

In hard core central city areas, poverty, crime, unemployment and subemployment, undermaintenance and inhabitibility of buildings, and general neighborhood decline are intensely concentrated. As one newspaper report described conditions in the South Bronx, 40% of the 400,000 residents were on welfare, 30% of the employables were unemployed; 20,000 were drug addicts; 9,500 were gang members; 20% of the houses were without water and 50% were without heat half of the time.[31]

In 1969, 3.6% of Blacks over age 14 were illiterate compared to only .7% of Whites.[32] In 1974, 82% of the White male population between ages 25 and 34 had completed high school while the comparable figure among Black males was only 67.9%. The figures were similar for women of each race.[33] Moreover, as indicated in the many desegregation cases this Court has heard, aside from the disparity

[30] U.S. Commission on Civil Rights, "Twenty Years After Brown. Equal Opportunity in Housing", Dec. 1976, pp. 10-11.

[31] *See* M. Tolchin, *The South Bronx, A Jungle Stalked by Fear, Seized by Rage*, N.Y. Times, Jan. 15, 1973, at 1, col. 2, the first of a four-part series. The series includes: *Gangs Spread Terror in the South Bronx*, Jan. 16, 1973, at 1, col. 5; *Rage Permeates All Facets of Life in the South Bronx*, Jan. 17, 1973, at 1, col. 3; *Future Looks Bleak for the South Bronx*, Jan. 18, 1973, at 1, col. 2.

[32] Illiteracy in the United States, U.S. Bureau of the Census, Current Population Reports, Series p. 20 No. 217 (Nov. 1969) at p. 8.

[33] "Educational Attainment in the United States" U.S. Bureau of the Census Series, p. 20 No. 274 G.P.O. Wash, D.C. (1974), p. 461.

in educational attainment, there is the large problem of inadequate education provided to minorities even when they complete their public schooling.

While Blacks constitute 11% of the general population, as of 1970, they comprised 42% of the nation's prison population.[34] In California, a similar pattern prevails. Constituting only 7% of the state's population, Blacks, however, represent 33.6% of California's male felon population.[35] The full implications of these statistics become clear when it is realized that there is more than a 90% correlation between the rise in the unemployment rate in this country and the increase of its prison population.[36] The traditional response of this society to the problems of poverty and unemployment has been to put the non-white in jail.

Thus, looking at the potential for non-whites to attain complete physical, mental and social wellbeing, one sees clearly a conspiracy of circumstances which make it almost miraculous to reach such a state of health. The statistics on the disparities in the quality of health between white and non-white Americans clearly reflect the disastrous consequences of this virulent segregation and discrimination.

A review of the current information charting the relative health of Orientals, Native Americans, Blacks, and

---

[34] "Sourcebook of Criminal Justice Statistics" United States Law Enforcement Assistance Administration, National Criminal Justice Administration, National Criminal Justice Information and Statistics Service, G.P.O. Wash., D.C. (1974), p. 461.

[35] "Characteristics of Felon Population in California State Prisons By Institution, June 30, 1976" State of California, Dept. of Corrections, (Aug. 19, 1976) p. 1.

[36] Budget Issue Paper on Federal Prison Construction prepared by the Congressional Budget Office for the Congress of the United States, January, 1977, p. 8.

Mexican-Americans, as contrasted to white Americans, reveals the abysmal failure of the health delivery system in this nation for these minorities and attests to its genocidal proportions. Even before non-whites are born, genocidal factors begin to take their toll. The non-white fetal death rate is 17.0 deaths per 1000 live birth as compared with the white fetal death rate of 10.2 per 1000 live births.[37] Approximately 584,000 non-whites infants are born every year.[38] If there was no racial discrimination in health care in this country, if the fetal death rates were the same for whites and non-whites, at least 4000 more American babies would live each year.

Once born, many more non-whites are unable to survive the first year of life. Because of the conditions under which they are forced to live the infant mortality rate at one year of life for non-white boys is 27.28 per 1000 as compared to 16.82 for white boys, and for non-white girls it is 22.41 per 1000 as compared to 12.86 for white girls.[39]

The same conditions which take such a heavy toll of non-white infants takes an even more shocking toll of non-white mothers. The figures show that more than 3 times as many non-white mothers die in pregnancy and childbirth as compared to white mothers. For non-whites, 35.1 women die for every 1000 live births, compared to 10.0 white women per 1000 live births.[40] Since the total number of non-white mothers to die from diseases of pregnancy in 1974 was more than 35,000,[41] it may be said that some 14,600 of them were killed by genocidal conditions under which they were forced to bear children.

---

[37] U.S. Bureau of the Census, *Statistical Abstract of the United States:* 1976. (97th edition) Washington D.C., 1976, table 91 at 64.

[38] *Id.* table 74 at 55.

[39] *Id.* table 87 at 61.

[40] *Id.* table 91 at 64.

[41] *Id.* table 91 at 64.

Once embarked upon life in the United States, non-whites are far more apt to fall victim of some childhood disease before reaching maturity than whites. During the first 24 years of life, non-whites have a death rate that is two to three times higher than that of whites, and between the ages of 25 and 30, the non-white rate is more than four times higher.[42]

Certain diseases are particularly specific in reducing the non-white population. Tuberculosis is by far one of the most serious health problem among non-whites. While the white male population will average roughly 35 new cases per 100,000 men, the non-white male population will average more than 200 new cases per 100,000 men, a difference of almost 600%.[43]

Hypertension, a major killer among Blacks, is clearly a health condition that directly results from racially discriminatory living conditions. Approximately 70% of Black women and 50% of Black men suffer from this disease as compared to 30% of white women and 19% of white men.[44] Approximately 6900 American die each year from hypertension,[45] and since the incidence of this disease for non-whites to whites is 2.5 to 1, this means that thousands of Americans must die unnecessarily each year due to this racial differential.

Diabetes is also a most efficient killer of non-whites. This chronic condition is prevalent among 38.4 non-whites per 1000 population, as compared to 23.1 whites per 1000 population.[46]

---

[42] *Id.* table 87 at 61.

[43] American Public Health Association, *Minority Health Chart Book,* U.S.P.H.S./D.H.E.W., Contract Number HRA 160-74, October 20-24, 1974, at 50.

[44] *Id.* at 48.

[45] Supra note 37 at 65.

[46] Supra note 43 at 44.

A review of some of the other specific causes of deaths will reveal that this same racial differential is present to alarming proportions. The rate for major cardiovascular diseases was 341.0 per 100,000 population for whites as compared to 457.9 per 100,000 population for non-whites, a difference of 116.5 per 100,000 population; in other words, 116.5 more non-white persons per 100,000 non-white population were dying than whites. For malignant neoplasms the rates are 126.8 for whites, and 158.6 for non-whites, a difference of 31.8 per 100,000 population; for accidents 52.6 for whites and 75.5 for non-whites, a difference of 22.9 per 100,000 population; for influenza and pneumonia, 22.9 for whites and 41.9 for non-whites, a difference of 19.6 per 100,000 population; for cirrhosis of the liver, 12.9 for whites and 24.0 for non-whites, a difference of 11.1 per 100,000 population.[47] Since the non-white population in the United States is currently roughly 25,500,000 [48] more than 51,485 Americans must die each year due to these racial disparities which exist in this nation's health care system.

Clearly, the magnitude of this problem demands that the question be asked whether the international restrictions against genocidal acts are being violated in this country. Four of the five specifically enumerated elements of genocide are currently present: Killing of the members of the group, causing serious bodily and mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part; and imposing measures intended to prevent births within the group. The only question which

---

[47] W. A.Darity, "Crucial Health and Social Problems in the Black Community," Journal of Black Health Perspectives 35 (1974).

[48] U.S. Bureau of the Census, Census of Population: 1970, *General Population Characteristics.* Final Report PC(1)-B1 United States Summary, Table 48.

remains to be addressed is whether these acts have been undertaken with the requisite *intent to destroy*.

C. The Legislative And Social History Of The Civil Rights Act Of 1964 Requires That The University Utilize The Most Expeditious Means Possible To Meet The Unserved Medical Needs Of The Non-White Population.

That the history of this country has been intentionally genocidal with respect to the Native American needs no further discussion. Nor is it the purpose of this brief to delineate the innumerable instances of government sanctioned violence and abuse which have been endured by Blacks, Mexican-Americans, and Asians throughout the past 200 years. We will start, rather, with the fact that in 1964, the United States Congress, more than 100 years after the first Civil Rights Act, was still emashed in finding a solution to the "race problem" in this country. The Congressional Record of the Senate and House debates surrounding the enactment of Title VI and the other provisions of the Civil Rights Act, is replete with references to the growing mass movement throughout the country in opposition to discrimination and segregation.[49] It was clearly the perception of the legislators that the people would no longer peacefully tolerate a segregated and unequal society and that comprehensive legislation was immediately needed to combat the continuing effects of discrimination. The explosions that erupted around the country starting in Los Angeles, California in 1965 confirmed these fears that the breaking point had been reached.

After thorough and exhaustive analysis of the causes of the violence that raked the nation from coast to coast, the Kerner Commission reaffirmed the position of Congress that discrimination and segregation still permeated much

[49] 110 Cong. Rec.—Senate 7070, 7899, 7900, 8594, 14312 (1964).

of American life and threatened the very future of the country. In calling for a massive national effort to combat the manifestations of racism, the Commission stated that:

> "It is time to adopt strategies for action that will produce *quick and visible progress*. It is time to make good the promises of American democracy to all citizens—urban and rural, white and black, Spanish-surname, American Indian, and every minority group. Pur recommendation embraces three basic principles:
>
> "To mount programs on a scale equal to the dimension of the problem;
>
> To aim these programs for *high impact in the immediate future* in order to close the gaps between promise and performance;
>
> To undertake new initiatives and experiments that can change the system of failure and frustration that now dominates the ghetto and weakens our society. [Emphasis added.] [50]

The goal of Title VI is to spur each independent governmental entity into taking action to eliminate its own particular manifestations of racial discrimination. Within the context of the University medical school system, this goal was translated into programs designed to produce more physicians who would help meet the critical health needs of the state's non-white communities. The ultimate goal of both Title VI and the Universities' special admissions program is to reduce in the quickest way possible those discriminatory racial disparities which result in unnecessary deaths and suffering for so many Americans. To the extent that the University is compelled to abandon the use of race-related criteria, and utilize those "less intrusive alternatives" discussed by the California Supreme Court,[50A] and its effectiveness in meeting this imperative

[50] Supra, note 21 at 2.

[50A] The suggestion that the University could change the admissions criteria for the entire Medical School system to emphasize

will be substantially diminished, and the needless loss of life among non-whites will continue. Justice Stevens, in discussing the standard for evaluating discriminatory intent, recently noted in his concurring opinion to *Washington* v. *Davis, supra,* at *253,* that:

> "Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the action. For normally the action is presumed to have intended the natural consequences of his deeds."

If we were to apply this standard of intent to determine whether there are violations of the prohibitions of the Genocide Code, the conclusion would be in the affirmative,

personal interviews, recommendations and character evaluations is unrealistic in light of the logistics involved in processing over 19,191 applications a year with a basically volunteer staff, and also in light of the fact that the educational testing complex is now a multi-million dollars industry in this country.

The Court also suggested that minority enrollment may be increased by instituting "aggressive programs to identify recruit and provide remedial training for disadvantaged students." It. should be noted that most of the Universities special admissions programs are already coupled with such aggressive outreach efforts. As noted in *Flanangen* vs. *President and Director of Georgetown* College, 417 F.Supp. 377, 379 (1976), a five year effort to increase minority enrollment at the Law School which emphasized recruiting had achieved relatively little success.

> ". . . Where an administrative procedure is permeated with social and cultural factors (as in a Law School admissions process), separate treatment for minorities may be justified in order to insure that all persons are judged in a racially neutral fashion (original emphasis)."

The Court also suggested that an increase in the number of places available in Medical Schools be made. This alternative is blind to the fiscal realities of our society, and, even if it were attainable, would be of doubtful benefit. Between 1967 and 1968 the University of California more than doubled its Medical School facilities. In spite of this, however, minority enrollment did not increase substantially prior to the beginning of the special admissions programs.

for the obvious and foreseeable consequences of continuing to deny health care to non-whites is to condemn them to the ravages of disease and illness which, ultimately, means death.

More than a century ago, the eminent Chief Justice Marshall declared that:

> "Ours is a constitution intended to endure for ages to come, and consequently to be adopted to the various crisis in human affairs." *U.S. Bank* v. *Deveaux,* 5 Cranch 61, 1809.

At the present time this nation is faced with a two-fold "crisis in human affairs." The racial discrimination which has historically permeated almost every aspect of American life is still a divisive and destructive element. As Judge Gabrielli stated in *Alvey* v. *Downstate Medical Center,* 384 N.Y.S. 2d 82, 84 (1976), in regard to the issue of "reverse discrimination:

> "Few legal issues have generated more public or scholastic controversy, or produced much passion among its debaters than that raised here.

The conflict which the Kerner Commission recognized as being a threat to the future of every American is still ominously present.[51] There is also in addition to the overall and general negative manifestations of racial discrimination, a special crisis with reference to the disparate health care services that are provided for this nation's non-whites. The severity of the race-related health deprivations which must be endured by Blacks, Mexican-Americans, Asians, and Native Americans must surely invoke the protections and sanctions of international law.

Whatever standard this Court finally determines to utilize in evaluating the constitutional claims of the parties involved must, by necessity, encompass a balancing of the

[51] Supra, note 21 at 1.

competing involved. As the New York Court of Appeals stated in its discussion of this issue in *Alevy, supra* at 90,:

> "We are of the view that in an issue of whether reverse discrimination is present, the courts should make proper inquiry to determine whether the preferential treatment satisfies a substantial State interest. . . . Thus, to satisfy the substantial interest requirement, it need be found that, on the balance, the gain to be derived from the preferential policy outweighs its possible detrimental effects."

Justice Brennan, in *United Jewish Organization of Williamsburg, Inc.* v. *Carey*, 97 S. C. 996, 1014 (1977), has articulated this same principle as it applies to a constitutional analysis of race-related criteria employed pursuant to the Voting Rights Act:

> "In my view, if and when a decisionmaker embarks on a policy of benign racial sorting, he must weigh the concerns that I have discussed [perpetuation of disadvantaged treatment, stimulation of latent race consciousness, and stigmatizing] against the need for effective social policies promoting racial justice in a society besit by deep-rooted racial inequities."

It is the position of amici that the application of a balancing of interests test to the instant case should result in an upholding of the use of race-related criteria by the David Medical School. The nature of the "racial discrimination" which must be endured by the white applicant under the special admissions program involves a decrease in opportunity to enter a professional school.[52] The nature of the racial discrimination which must be born by non-whites in absence of the most effective means of alleviating

[52] Even given this discrimination, more than 80% of the U.C. Medical applicants who are accepted are still white. In 1976, 6.3% of the accepted applicants were Black, 9.6% were Mexican American, 0.3 were Native Americans, 1.7% were other, and 82.1% were white. Figures provided by Gary Morrison, Office of the General Counsel, University of California (May 20, 1977).

health care deprivations is death and disease. To sustain the right of one citizen to go to a particular school over the right of other citizens to live would be morally and socially, as well as legally wrong.

D. The Non-White Communities In California Have Special Health Care Needs Which Require The Use Of Race-Related Criteria In The Universities' Medical School Selection Process.

It is the purpose of this final section to delineate those particular factors which make necessary the use of a race-related criteria. Amici, in presenting these arguments, do not claim that *only* minority doctors can service minority communities; what they do assert is that the use of racial criteria *as one component* of the entire selection process does serve to substantially increase the number of doctors who do, in fact, provide health care services to non-white communities. As stated before, the nation-wide ramifications which will result from this case require that the analysis be conducted on a national as well as a state-wide level.

Upon review of the bare statistics involved, the most important fact that becomes immediately apparent is that the ratio of doctors to population is significantly smaller for non-whites as compared to whites. The total population of the United States as of 1970 was 203 million people. Of this total, 22.6 million (11.1%) were Blacks, 10.1 million (5%) were of Spanish heritage, and 800 thousand (0.4%) were native Americans.[53] Yet, as of 1972 there were only 5,478 Black doctors in the entire United States,[54] as of 1974 there were only 400 Chicano doctors in the entire United States,[55] and as of 1969 there were only 4 known full

[53] A. Golenpaul, Information Please Almanac (29th ed. 1974).

[54] Thompson, *Curbing the Black Physician Manpower Shortage*, 49 Journal of Medical Education 944-950 (1974).

[55] Herrera, *Chicano Health Professionals*, Agenda 8-11 (Winter, 1974).

blooded American-Indian doctors in the country.[56] Approximately one of every 560 white Americans become a doctor,[57] whereas one of every 3,800 Blacks [58] and one of every 20,000 Chicanos [59] becomes a doctor. In California, Blacks comprise approximately 7.6% of the population and and Mexican-Americans, 15-18%.[60] Yet Blacks currently comprise only 2.2% of the employed physicians in California, and Mexican-Americans constitute about 1% of the employed physicians in the State.[61] The magnitude of this deficiency was expressed in a statement issued by the past President of the National Medical Association:

> "If every Black physician trained since 1865 were still alive, we would still be more than 12,000 short".[62]

As to the Black population, there is currently an unmet need in this country for 25,000-300,000 more Black doctors.[63]

---

[56] Johnson, *Conference on Increasing Representation in Medical Schools of Afro-Americans, Mexican-Americans, and American Indians*, 44 Journal of Medical Education 710-711 (1969).

[57] Spruce, *Toward a Larger Representation of Minorities in Health Careers*, 64 Journal of the National Medical Association 432-436 (1972).

[58] Id.

[59] Herrera, *Chicano Health Professionals*, Agenda 8-11 (Winter, 1974).

[60] U.S. Bureau of the Census, U.S. Census at 591, 593, Tables No. 189-190 (1970).

[61] Testimony of William Burnett, *Hearings on the Bakke Decision and Increasing Access for Disadvantaged Graduate Students Before the California Assembly Permanent Subcommittee on Postsecondary Education*, March 2, 1977, p. 38.

[62] Whittico, *The President's Column: The Medical School Dilemma*, 61 Journal of the National Medical Association 185 (1969).

[63] Brown, *A Position Paper on Admissions to the University of Minnesota Medical School*, 62 Journal of the National Medical Association 468-469 (1970).

Although it is quite obvious that California suffers from a severe shortage of doctors to service the non-white communities, the State University system has abysmally failed in its responsibility to train these doctors.

An informal survey conducted in San Diego County in 1977 revealed that of the 18 Spanish surnamed doctors in the county, all but two were educated in Mexico.[64] Of the 18 Black doctors practicing medicine in San Diego County, all but 4 went to predominately Black Meharry Medical College in Tennessee (two attended Loma Linda, one attended Howard University, and one attended U.C.S.D.).[65] One commentator on the subject has observed that:

> ". . . the bulk of the burden for supplying health care professionals to the Black segment of the population has rested with the two Black medical schools, Meharry Medical College and Howard University College of Medicine, which up until 1968 accounted for as much as two-thirds of all Blacks in America graduating from medical school."[66]

It is particularly significant that one of the major consequences of the Civil Rights Act of 1964 has been the integration of the Black medical schools. Other amici will address this issue in detail; it is enough to note here that substantially fewer numbers of Black physicians are now being produced by these institutions.

According to figures recently compiled by the University of California, in 1965, out of 198 first year enrollees in the state's two public medical schools (UCLA and USCF)

---

[64] Testimony of Mary Bush, *Hearings on the Bakke Decision and Increasing Access for Disadvantaged Graduate Students Before the California Assembly Permanent Subcommittee on Postsecondary Education*, March 2, 1977, p. 52.

[65] *Id.*

[66] Jackson, *The Effectiveness of a Special Program for Minority Group Students*, 47 Journal of Medical Education 620-624 (1972).

there were only two Blacks and no Mexican-Americans.[67] By 1968 first year enrollment was up to 400, which included 7 Blacks and 1 Mexican-American.[68] Thus very few minority doctors were being produced by the University of California's Medical Schools prior to the advent of the special admissions program. By 1976, after the full impact of the special admissions program, 31 (5.6%) of the entering students were Blacks, 48 (8.6%) were Mexican-Americans, 2 (0.4%) were native Americans, and 59 (10.6%) were Oriental.[69] The same trend is indicated by a perusal of the number of applications received prior to and after the advent of the special admissions program. In 1966 UCLA received a total of 904 applications for admission, of which 17 were minority applicants. In 1968 UCLA received a total of 923 applications of which 65 were minority applicants, and UC Davis received a total of 564 applications, of which 22 were minority applicants.[70] In 1976 UCLA received a total of 4,000 applications of which 773 were minority applicants, and UC Davis received a total of 3,953 applications of which 665 belonged to minority applicants.[71]

The above figures clearly indicate that the Universities' medical schools were segregated institutions prior to the advent of the special admissions program. It was to alleviate this continuing discrimination that the University officials undertook the use of certain race-related admissions criteria. In doing so, the University took recognition of the fact that minority doctors are more likely to practice in minority communities while white doctors are more likely to practice in white communities. Contrary to the ruling of

---

[67] Figures provided by Gary Marrison, office of the General Counsel, University of California, (May 20, 1977).

[68] Id.

[69] Id.

[70] Id.

[71] Id.

the California Supreme Court, the validity of this position is virtually indisputable.

In Los Angeles County where a significant number of the state's doctors live, white physicians tend to flock to affluent white areas such as Santa Monica, Westwood, Beverly Hills, and Hollywood Hills.[72] In those areas there is 1 primary care doctor for each 618 people.[73] This in turn, has resulted in extreme shortages of primary care physicians to service the ghettos, barrios and other non-white communities.[74] In such areas the ratio is one primary care doctor for each 2,500 people.[75]

It has been well established that Black physicians tend to concentrate where Black people concentrate[76] and tend to service the unmet needs of the ghetto. A recent survey of 3,600 graduates of Meharry Medical College reported by its President, Lloyd C. Elam, reveals that some 80 percent of these professionals were currently practicing in . . . rural or urban minority communities.[77] Another study of Black doctors working for OEO and Black doctors in a comparable group, found that four times as many Black doctors were working for OEO as in the private sector (198 Black doctors in OEO, 43 Black doctors in control

---

[72] Testimony of William Burnett, *Hearings on the Bakke Decision and Increasing Access for Disadvantaged Graduate Students Before the California Assembly Permanent Subcommittee on Postsecondary Education*, March 2, 1977, pp. 36-37.

[73] Id.

[74] Id.

[75] Id.

[76] Evans, "*Reverse Discrimination,*" 51 Journal of Medical Education 80-82 (1976).

[77] Abarbenal, *After Intensive Care: Is a Relapse Ahead for Minority Medical Education?*, 17 Foundation News 11-28 (1976).

group).[78] And as to doctors from all minorities, most have indicated their desire to serve the needs of the minority communities.[79] Indeed, over the years the minority physician has been basically the sole provider of health care for minorities in this country.[80]

Another recent study indicates that this same trend is found among medical students. Among Black medical students 75.4% of single men, 77.9% of married men, 84.8% of single women, and 80.0% of married women express an interest in practicing in physician shortage areas.[81] Among other underrepresented groups, the figures were 78.3% for single men, 71.4% for married men, 95.2% for single women, and 83.3% for married women.[82] Among white medical students, those interested in practicing in physician shortage areas were 44.7% single men, 41.9% married men, 59.5% single wonmen, and 47.0% married women.[83] This entire analysis definitely supports the conclusion of many commentators that as the number of non-white doctors increases, the quantity of health care services to non-whites of every socio economic status will in-

---

[78] Tilson, *Characteristics of Physicians in OEO Neighborhood Health Centers,* 10 Inquiry 27-38 (1973).

[79] Testimony of William Burnett, *Hearings on the Bakke Decision and Increasing Access for Disadvantaged Graduate Students Before the California Assembly Permanent Subcommittee on Postsecondary Education,* March 2, 1977, p. 37.

[80] *Primary Care: Getting Down to Basics,* 4 The Black Bag 156-157 (1976).

[81] Mantovani, Gordon, and Johnson, *Medical Student Indebtedness and Career Plans,* 1974-75, DHEW Publications Number (HRA) 77-21 (1976).

[82] Id.

[83] Id.

crease; whereas white doctors, on the whole, do not establish practices in non-white communities.[84]

The existence of language barriers is another factor which makes the use of race-related criteria necessary. It is elementary that before a physician can begin to diagnose and treat a patient, there must be communication between the two. The problem of the language barrier in providing medical services to Mexican-Americans and most other minorities is obvious and is discussed in detail by other amici. The point that must be made here is that Blacks, too, have a special linguistics problem which complicates their health care needs. Judge J. Skelly Wright noted in *Hobson* v. *Hansen,* 269 F. Supp. 401, 480 (1967) that "the language which is spoken by Negro children in the ghetto has been classified as a dialect."

One study on the health status of the American Black provides this discussion on the point:

> "A major difficulty in the reception of health care is the social difference between the provider and the recipient of health care. Inasmuch as the former is in possession of the information which the recipient requires for the care of his health, this must be transmitted adequately. Professionals should be more aware of this and be alert to the need to modify their presentation to assure and insure acceptability and understanding." [85]

Dr. Emery L. Rann, in his retiring address as president of National Medical Association presented the following scenario which clearly illustrates the nature of the problem:

---

[84] Evans and Jackson, 51 Journal of Medical Education 197-199 (1976).

[85] P. Cornely, Health Status of the Negro 58(4)AJPH 651 (April 1968).

> "Complete misunderstandings exist between Americans of different racial stock and social backgrounds, for instance, I was impressed with an experience a psychologist friend of mine in Los Angeles had. A white co-worker was testing a Black child and asked if the child liked oranges. The child replied that she didn't know what an orange was. The psychologist was shocked and bewildered that a child in California didn't know what an orange was. She mentioned this to my friend who went to the child and asked, 'Do you like ~~oranges~~?' The child immediately lit up and exclaimed, 'O yes, I love 'em'." [86]

There are only two practical solutions to this problem of linguistic barriers: train more white doctors to speak minority languages or train more minorities to become doctors. Obviously, the latter course is much more practical than the former, and, to this end, race-related criteria are irreplacable.

Finally, there are special requirements in the area of mental health care services which necessitate the use of race-related criteria in selecting among the applicants to a state medical school.

In addressing itself to the poor health conditions which helped create an environment conducive to civil disturbances, the Kerner Commission noted that:

> "The residents of the racial ghetto are significantly less healthy than most other American. They suffer from higher mortality rates, higher incidence of major diseases, and lower availability and utilization of medical services. They also experience higher admission rates to mental hospitals." [87]

As discussed above, one of the definitions of genocidal crime is the causing of serious mental harm to members

[86] E. L. Rann. Why NMA? 66(5) Journal of the National Medical Association 435-439 (Sept, 1974).

[87] Supra, note 21 at 269.

of a racial group. There can be no doubt that the general social and living conditions which whites have historically imposed upon non-whites have taken their toll in mental frustration and anguish. For Blacks, in particular, the mental harm endured has been overwhelmingly brutal due to the many instances of psychological terror and mass intimidation inflicted by the Klu Klux Klan and other violently racist groups and individuals.[87A]

The magnitude of the mental health problem for non-whites can most easily be understood through an analysis of the relative suicide statistics. During the critical age period of 25-34, the annual suicide rate for Native Americans was 30 per 100,000 population as compared to 8 per 100,000 for whites.[88] In New York the Black male suicide rate is twice as high as whites for the 20-35 age bracket and in California the number of Black women between 20-24 who commit suicide has increased to a rate of 30.2 per 100,000, as compared to a white female rate of 13.6.[89] In the latter half of the 1960's, Black and Chicano suicides increased 45%, as compared to an increase of only 9% for whites. Among Black, 72% of suicides occurred before the age of 40, among Chicanos, 66%, and among whites only 30%.[90]

It is in the area of mental health services that it becomes especially important to train minority doctors to service the needs of minority communities. The components of mental health are, to a significantly degree, socio-economic and cultural. Family, community, and structured

[87A] R. Ginzburg. One Hundred Years of Lynchings (1969)

[88] Supra, note 43 at 51.

[89] J. L. Warfield, Black People and Suicide: A review from a Black Perspective. JBHP 1 (4): 11-28, Aug.-Sept. 1974.

[90] R. H. Seiden Current Development in Minority Group Suicidology. JBHP 1(4): 29-42, Aug.-Sept. 1974.

institutions of local and national government play a significant part in strengthening or weakening the psychological and physiological matrix of one's health. If mental health is defined as that condition existing in an individual which enables him to function in a society, then for non-whites it must necessarily include survival tactics geared to handle hostile ethnocentric stimuli, gross deprivations and punitive biosocial imperatives.[91]

A recent study of public psychiatric services in Los Angeles reveals that the ethnocentricity of white therapists in regard to non-white patients has a decidedly adverse influence on treatment outcome.[92] One treatise explains the problem thusly:

> ". . . white psychiatrists unconsciously withdraw from an intimate knowledge of a Black man's life because placing themselves in the position of the patient is mentally too painful. However, the intimate knowledge of the patient is vital to diagnoses and treatment; in the absence, the patient suffers." [93]

There are far too few mental health professionals who have adequate knowledge about the health needs of poor non-whites. This probably explains why admissions rates to state and county mental hospitals reveal that the highest admissions were among non-white male in the age group 35-44 years with 753 admissions per 100,000 population. It may also explain why the overall incidence of schizophremia is greater in a non-white hospital.[94]

---

[91] H. Applewhite. Blacks in Public Health. Journal of the National Medical Association, Vo. 66, number 6, pp. 505-510, Nov., 1974.

[92] Id.

[93] William H. Grier and Price M. Cobbs, Black Rag. Basic Books, Inc. 1968.

[94] Supra, note 90, 505-510.

Based upon the above analysis it is highly improbable that very many white doctors can be adequately trained to handle the unique mental health needs of most racial minority groups in this country. It is not a matter of lack of interest, empathy or sympathy, on the part of white doctors, but rather the existence of unbridgeable cultural orientations. As to this point, it is clear that none of the "less intrusive" alternatives proposed by the California Supreme Court will take the place of racial criteria in selecting doctor who will effectively be able to correct deprivation in mental health care for non-whites.

CONCLUSION

It has been the goal of amici to delineate those facts which support the conclusion that a special admissions program which utilizes race-related criteria is not only legally sustainable, but also morally and socially necessary. The crisis which Justice Marshall referred to long ago is upon us once again, and the Constitution must, be shaped to meet the special needs of the time. Once again the Blacks and other races stand as petitioners before the Supreme Court of this nation and ask for justice. As stated by the late eminent legal scholar, Judge Loren Miller:

> "The Supreme Court of the United States does not deserve all credit for the nation's new march toward the color-blind society, but what it has done in the last third of a century since the close of the Civil War has helped mightily. Certainly it broke the log jam of law and precedent without which little or nothing could have been done. It would take blindness of another sort and of great dimensions to conceal the fact that much remains to be done. But there is hope now where there was once despair; there is faith now where there was once doubt and cynicism." [95]

---

[95] L. Miller. The Petitioner 433 (1967).

The responsibility now rests with the Court to uphold this faith and hope.

Respectfully submitted,

DANIEL M. LUEVANO
JOHN E. MCDERMOTT
JOHN O. CALMORE
MICHELE WASHINGTON

Western Center on Law & Poverty
1709 W. 8th Street, Suite 600
Los Angeles, California 90017
(213) 483-1491

Attorneys for Amici Curiae

June 7, 1977